

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN W. HARRIS,

Plaintiff,

v.

TINA STANFORD,

Defendant.

19-CV-1570-LJV-LGF
DECISION & ORDER

On November 19, 2019, the *pro se* plaintiff, John W. Harris, commenced this action under 42 U.S.C. § 1983, alleging violations of his Fifth, Eighth, Thirteenth, and Fourteenth Amendment rights. Docket Item 1. On May 11, 2020, the defendant, Tina Stanford, moved to dismiss the complaint. Docket Item 6. Harris responded to the motion to dismiss on June 8, 2020, Docket Item 9, and on July 13, 2020, Stanford replied, Docket Item 10. Harris filed additional letters on October 12, 2021, and November 8, 2021.¹ Docket Items 18, 20, 21.

In the meantime, this Court referred this case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 7. On March 18, 2022, Judge Foschio issued a Report and Recommendation (“R&R”) finding that Stanford’s motion should be granted. Docket Item 24. The parties

¹ On November 5, 2020, Harris filed an additional letter referencing this case in W.D.N.Y. Case No. 19-CV-1569. See W.D.N.Y. Case No. 19-CV-1569, Docket Item 25.

did not object to the R&R, and the time to do so now has expired.² See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Foschio's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Foschio's recommendation to grant Stanford's motion to dismiss. And while a *pro se* complaint generally should not be dismissed without granting leave to amend unless repleading would be "futile," "[t]he problem with [Harris's] causes of action is substantive[, and] better pleading will not cure it." *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000). Harris's complaint therefore is dismissed without leave to amend.

For the reasons stated above and in the R&R, Stanford's motion to dismiss, Docket Item 6, is GRANTED. The Clerk of the Court shall close the case.

² Copies of the RR&O were mailed to Harris at two addresses. See Docket Item 24. One mailing was returned as undeliverable, see Docket Item 25, the other presumably was delivered.

SO ORDERED.

Dated: April 18, 2022
Buffalo, New York

/s/ Lawrence J. Vilaro
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE